

No. 10217.

IN THE
United States Circuit Court of Appeals
FOR THE NINTH CIRCUIT

KENNETH R. GREENWOOD, Administrator of the Estate of
Charles H. Greenwood, Deceased,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

PETITIONER'S REPLY BRIEF.

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While it appears that the substantial points of the respondent's argument are covered in the opening brief of the petitioner, it is believed that the following observations may serve to clarify the issues.

I.

Under point I of his argument the respondent contends that the petitioner has not shown that the decedent and his wife transmuted his separate property into community property, and therein he seems to take the position that the petitioner seeks to nullify a written agreement creating a

joint tenancy by a subsequent oral agreement mutually understood and intended. Such is not the case. What the petitioner seeks to make clear is that the written agreement as to the safe deposit box rental and the mutual understanding and intention of the parties are entirely consistent and in support of the community property theory under the laws of the State of Arizona. It is the petitioner's position that the safe deposit box rental agreement could in no such case create a joint tenancy as contemplated by the revenue laws. Joint tenancy as contemplated by the revenue laws is a tenancy wherein the grand incident is survivorship by which the entire tenancy remains to the survivor. (*U. S. v. Jacobs*, 306 U. S. 363.) It is submitted that in the instant case no such joint tenancy was created, and it is believed that points V, VI and VII of the petitioner's opening brief substantiate that position. It is obvious from the facts found by the board and discussed in petitioner's opening brief that the incentive of the decedent and his wife was equal ownership in community and not right of survivorship. Otherwise, the property would not have been referred to as community property and the decedent and his wife would not have made wills devising and bequeathing their respective shares. The written safe deposit box rental agreement clearly shows that equal ownership was intended, and, coupled with statements as to community property, it supports the petitioner's contention that a transmutation from the separate property of the decedent to the community property of both was effected.

II.

Under point II of his argument the respondent seems to argue that if the written safe deposit box rental agreement failed to establish a joint tenancy with right of survivorship, it failed to affect the status of the property in any respect and title remained, as before, in the decedent.

It is submitted that such argument is unsound in view of the express provisions of Section 986 of the Revised Code of Arizona, 1928. Under that section it is clear that where property held in joint tenancy does not pass to the survivor, the interest in the estate of the owner dying descends to the heirs of the deceased joint owner as though his interest had been severed and ascertained. In such case the instrument of title has not wholly failed and the owners are not restored in title to their former status. In effect, the instrument creates a tenancy in common and not a joint tenancy, and where the two joint owners are husband and wife and intend to hold in community rather than as tenants in common, a community estate is created. But even if a tenancy in common was created in the instant case, only one-half of the estate would be subject to federal estate tax.

It is a point worth stressing that when the safe deposit box rental agreement in the instant case was executed by the decedent and his wife, Section 1102 of the Revised Statutes of Arizona, 1913, was in force, and under that section it seems that a joint tenancy with right of survivorship could not be created in personal property even if the document of title expressly vested title in the survivor.

Section 986 of the Revised Code of Arizona, 1928, became effective July 1, 1929, and continued in effect at all times during the remainder of the decedent's life. But, as shown by the petitioner under Points V, VI and VII of his opening brief, even under this new section a joint tenancy was not created in the instant case. Both of these sections are set out in full in the petitioner's opening brief (pp. 14 and 15).

The decedent and his wife plainly agreed upon equal ownership and treated the property as community property, and it is clear that they intended community ownership and not joint tenancy in both or separate ownership in the decedent.

Respectfully submitted,

JOHN M. SCHWARTZ,

Attorney for Petitioner.